

TAB F

VOLUME: I  
PAGES: 1-288  
EXHIBITS: 1-13

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

	X	
CYCLE-CRAFT CO., INC.,	X	
d/b/a BOSTON	X	
HARLEY-DAVIDSON/BUELL,	X	
Plaintiff	X	
	X	CASE NO.
vs.	X	04 11402 NMG
	X	
HARLEY-DAVIDSON MOTOR	X	
COMPANY, INC., and BUELL	X	
DISTRIBUTION COMPANY, LLC,	X	
Defendants	X	

**DEPOSITION of RONALD S. BUCHBAUM**, taken pursuant to the applicable provisions of the Federal Rules of Civil Procedure, before Jill Kourafas, Certified Shorthand Reporter and Notary Public in and for the Commonwealth of Massachusetts held at the Law Offices of Bingham McCutchen, 150 Federal Street, Boston, Massachusetts, on June 2, 2005, commencing at 9:10 a.m.

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1 plans required to be submitted to  
2 Harley-Davidson on an annual basis by  
3 dealerships?

4 A. I don't know. We submit it when the  
5 district manager asks me for one.

6 Q. Do you know what an "SWR" is?

7 A. Yes.

8 Q. What is an "SWR"?

9 A. It's a form that Harley has to show the date  
10 of the warranty of a motorcycle.

11 Q. And that's a form that dealers submit to  
12 Harley-Davidson?

13 A. Yes. Dealers electronically submit this to  
14 Harley-Davidson.

15 Q. All right. And has Cycle-Craft been  
16 submitting SWRs on its sales to customers  
17 electronically since you joined the  
18 dealership?

19 A. Yes, I believe so.

20 Q. All right. And are you familiar with a  
21 system, a computer system called "Talon,"  
22 T-A-L-O-N?

23 A. Yes.

24 Q. Is that how -- does Cycle-Craft submit SWRs

1 through that computer system to  
2 Harley-Davidson?

3 A. Yes, I believe so.

4 Q. And is it your understanding that the effect  
5 of submitting the SWR is that's the point  
6 where the warranty for the motorcycle starts  
7 for the customer, that is, it's the  
8 submission of the SWR that triggers that  
9 warranty period to start?

10 A. As far as I know, that sounds correct.

11 Q. And that by submitting an SWR, the dealer is  
12 reporting to the factory that a customer has  
13 taken delivery of a motorcycle and that the  
14 warranty period should now begin for that  
15 customer?

16 MR. REHNQUIST: Objection.

17 Q. You can answer.

18 A. I don't know if that's the way it's supposed  
19 to be.

20 Sometimes SWRs have been submitted  
21 at the dealership that I work at Boston  
22 Harley prior to the customer taking home the  
23 motorcycle.

24 Q. What is -- is there a usual practice in

1 A. Yes, sir.

2 Q. The second sentence says, "Any inventory not  
3 sold by July 1 is deducted from the  
4 dealership's allocation in the following  
5 year and then replaced in the year after  
6 that"; do you see that?

7 A. Yes.

8 Q. And what do you mean when you say "its  
9 replaced in the year after that"?

10 A. I have to lean back, I have neck -- my neck  
11 has a crick in it, so I'm not doing it to be  
12 lazy.

13 Q. It's all right.

14 A. *(Reading)* "Any inventory not sold by July 31  
15 is deducted from the dealership's allocation  
16 for the following the year and then replaced  
17 in the year after that."

18 In other words, Harley-Davidson  
19 forces the dealership every year to sell out  
20 its allocation of the motorcycles that it  
21 received, as far as I know it to be. The  
22 end of the model year is July 31. August  
23 begins a new model year.

24 If a dealership has any motorcycles

1 left on the last day of July 31 that it has  
2 not promised to a customer or sold to a  
3 customer or held for a customer, whatever,  
4 and that bike is not accounted for as being  
5 held, sold, the way I understood it, then  
6 the next year, instead of the dealership  
7 getting 800 bikes a year -- let's say there  
8 were 200 of those -- it would only get 600  
9 the following year because those 200 were  
10 not accounted for or held or sold or  
11 whatever. And then they'll -- that wouldn't  
12 be replaced until the next year, and then  
13 they get their 800 back.

14 Q. Assuming that they sell through the  
15 allocation in the following year?

16 A. Yes, sir. Yeah, yeah. They have gotta sell  
17 it. They can't keep them.

18 Q. So, bikes that have not been sold as of the  
19 last day of the allocation period are  
20 deducted from the next year's allocation?

21 A. That's the way I understand it to be.

22 Q. What were the consequences for the  
23 dealership if they didn't sell through the  
24 allocations?

1 MR. REHNQUIST: Objection to the  
2 form.

3 A. If you're running a business, that means  
4 that the next model year in 2006 -- let's  
5 say '06, the consequence is instead of  
6 getting 700 new bikes from Harley-Davidson  
7 '06s, you'll only get 500 '06s.

8 Q. which is going to lead to a reduction in  
9 sales?

10 A. which leads to a reduction in sales, a  
11 reduction in profit and not being able to  
12 sell the amount of motorcycles that you're  
13 supposed to be getting.

14 Q. Is it fair to say that it was important to  
15 avoid that situation for the dealership in  
16 that year and every year?

17 A. Absolutely.

18 Q. How did Cycle-Craft inform Harley-Davidson  
19 that a bike had been sold prior to the end  
20 of the model year?

21 MR. REHNQUIST: Object to the form.

22 Q. Was that through the SWR submission?

23 A. Yes.

24 Q. All right. You say in the same paragraph

1           that "in July of 2003, Cycle-Craft faced" --  
2           still Paragraph 3 "in July 2003 Cycle-Craft  
3           faced an overstocked inventory situation";  
4           do you see that?

5       A.     Yes.

6       Q.     And did that overstocked situation arise by  
7           virtue of bikes having been sent to the  
8           warehouse and then released or are you  
9           referring to something else?

10      A.     No, it was -- it was just -- we had extra --  
11           we haven't sold all of our allocated bikes.  
12           I think it was a culmination of a lot of  
13           things why the dealership didn't sell all  
14           the allocated bikes.

15                   of course, one of the areas I blame  
16           would be what you just said, you know, the  
17           warehouse released them in July, so we had  
18           to hustle and that's why we had that big  
19           sale in July.

20      Q.     You do not, though, hold Harley-Davidson  
21           responsible in any way for that overstocked  
22           inventory situation, do you?

23                   MR. REHNQUIST: I object to the  
24           form.

1 I remember Jason Marsca is another  
2 fella that worked for us, I remember I  
3 offered him a V-rod at that time and he  
4 was contemplating and then he turned it  
5 down below cost. He said, "No, I don't want  
6 one.

7 Q. Okay. As of that time, the bikes hadn't  
8 been sold yet; ultimately, they were sold to  
9 other people; is that right?

10 MR. REHNQUIST: Object to the form.

11 A. At the time that these people got them?

12 Q. The meeting that you're talking about.

13 A. They were available.

14 Q. But they hadn't been sold?

15 A. No.

16 Q. Okay.

17 A. So, that's why I got two. Mike -- now, in  
18 my case, I got two, Mike Bloom got three or  
19 four, we would -- if we didn't sell these  
20 bikes in a timely fashion to someone else,  
21 I was going to buy these bikes. I  
22 committed to these bikes. That's why we  
23 held them.

24 Q. The dealership submitted SWRs for these

1           bikes according to Harley-Davidson  
2           records?

3       A.     They did.

4       Q.     And that was done on July 31?

5       A.     That's correct.

6       Q.     of 2003?

7       A.     Correct.

8       Q.     And then after that, the bikes were sold to  
9           other individuals?

10      A.     Other individuals, correct, and then we  
11           called up or transmitted -- let's say,  
12           Ron Buchbaum had a bike and then  
13           Mr. Berkowitz -- Ron Buchbaum didn't pick up  
14           that bike. We transmitted the SWR, but I  
15           never got it, because I would rather have  
16           a customer pay for it and, you know, pay  
17           more money for it, and you were the  
18           customer, Mr. Berkowitz, he came in and got  
19           it.

20      Q.     But at that point it was after the end of  
21           the model year, right?

22      A.     Yeah.

23      Q.     But you've already reported it sold to  
24           Harley-Davidson?

1 A. No, sold to me.

2 Q. I mean, you've already reported to  
3 Harley-Davidson that that bike's been sold?

4 A. To me.

5 Q. Right, but you haven't actually physically  
6 taken possession?

7 A. I haven't physically taken possession of it.

8 Q. Was it Jamie's responsibility, at your  
9 direction, to submit the SWRs?

10 MR. REHNQUIST: I object to the  
11 form.

12 A. I don't know whether it was under my  
13 direction. I think it was Jamie's  
14 responsibility to do it and it probably was  
15 under my direction, because, as I said  
16 earlier in my testimony, I've done this at  
17 Motown, I've done this at Barnett.

18 This is a practice that I've done  
19 year after year to protect the dealership  
20 from losing allocated bikes.

21 And if I may add something?

22 MR. REHNQUIST: No.

23 Q. Don't add anything.

24 A. Okay.

1 Q. No offense. Nobody wants to hear it, at  
2 least not now.

3 MR. REHNQUIST: It's about an hour.  
4 Bill, do you want to break?

5 MR. BERKOWITZ: Let me finish this  
6 line. It won't take long.

7 Q. The corrections to the SWRs or the  
8 adjustments that were made to SWRs, did you  
9 ask Jamie to make those changes after the  
10 bikes were sold to --

11 A. She would have done that automatically.

12 Q. All right. Mr. McPhee's affidavit, if you  
13 take a look at it, the bottom of  
14 Paragraph 23, it says, "In each case the SWR  
15 was appropriately adjusted to reflect the  
16 second purchaser as the customer"; do you  
17 see that?

18 A. Yes, sir.

19 Q. And, you know, before you had said you  
20 wanted to change your declaration because of  
21 the use of the word "purchaser," in fact,  
22 none of the people in the first column  
23 actually purchased the bikes; is that  
24 correct?

1 MR. REHNQUIST: I object the form  
2 of the question.

3 Q. You may answer.

4 MR. REHNQUIST: What do you mean  
5 "purchase"?

6 Q. Well, in fact, none of the people in the  
7 first column actually purchased the  
8 bikes?

9 A. They all purchased them. We put them  
10 aside for them. They all committed to a  
11 purchase.

12 Q. All right. But they didn't actually buy  
13 the bikes, pay them and take delivery of  
14 them?

15 A. They weren't paid and they weren't  
16 delivered, but they did say, "Hey, we're  
17 taking that bike, put it aside for us,"  
18 yes.

19 (Pause.)

20 well, I don't know about these  
21 people (*indicating*).

22 Q. Which ones don't you know about?

23 A. I wasn't aware of Dan Sica and John Sica.  
24 They were Jamie's friends.

1 before?

2 A. I think I've had that conversation before,  
3 that's why it was not new to me.

4 Q. And do you recall how you learned of that  
5 requirement, if you learned of it?

6 A. *(Witness nodding.)*

7 Q. You're shaking your head, but you've got to  
8 answer verbally, do you recall?

9 A. Probably in my tenure with Harley.

10 Q. Okay. I'm sure that's the case, but do you  
11 recall from whom or under what  
12 circumstances?

13 A. Well -- no.

14 Q. Did you ever see anything in writing that  
15 specified that rule or requirement?

16 A. No.

17 MR. REHNQUIST: Do you mean prior  
18 to the termination letter?

19 THE WITNESS: That's prior to this  
20 litigation I haven't seen it.

21 Q. Do you recall anyone from Harley-Davidson  
22 telling you about that?

23 MR. REHNQUIST: About what? I  
24 object to the form.

1 A. About?

2 Q. Your belief that -- that bikes could only be  
3 sold to individuals.

4 A. I think I always knew it was an unwritten  
5 rule that Harley did not want you reselling  
6 these motorcycles to people that were going  
7 resell them.

8 You had to sell it to a person that  
9 was going to ride this bike and we run into  
10 that a lot where people will try to buy them  
11 and we don't sell them two or three bikes.  
12 We sell one bike per person.

13 Q. How do you find out whether the person's  
14 going to resell them?

15 A. Well, you don't find out. You find out if a  
16 person comes in and says, "Hey, I want three  
17 motorcycles."

18 "You can't buy three motorcycles.  
19 What do you want three motorcycles for?"

20 Q. If you find out that they want to buy them  
21 for three customers, do you tell them, well,  
22 those customers have come into the  
23 dealership and we'll deal with them?

24 A. Yeah, I've had a lot of people that have

1 slim's buyers?

2 MR. REHNQUIST: I object to the  
3 form.

4 Q. Was that what you were telling him?

5 A. No. My instructions were, "call this fella  
6 up and handle him." That's what I told him.  
7 'Cuz you said on the first call.

8 Q. Well, was your -- were you intending to  
9 indicate to Sean that he should deal with  
10 this gentleman, Slim's buyers?

11 A. I don't even think I mentioned that.

12 Q. Okay.

13 A. I told Sean to call this fellow and he's got  
14 20 people that wants to buy bikes or 25 -- I  
15 forget the number -- but call him right away  
16 and get something going.

17 Q. Well, my question is whether was it okay  
18 with you for Sean to deal with Slim so long  
19 as he got individual names for the bikes  
20 that were being sold?

21 A. Absolutely, as long as a person bought the  
22 bike, an individual.

23 If you, Mr. Berkowitz, bought a  
24 bike and Mr. Berkowitz was paying for that

1 A. I don't think I would have been privy to  
2 that.

3 Q. You don't recall actually --

4 A. Yeah, yeah, yeah. I take that back. Yes, I  
5 do remember it.

6 Q. And do you recall when a carrier came in to  
7 pick up the motorcycles destined for  
8 Florida?

9 A. I recall a carrier coming, but I didn't get  
10 involved with that. I was told that the  
11 Florida bikes are being picked up now.

12 Q. So, you don't remember actually seeing 19  
13 motorcycles loaded onto a truck?

14 A. Yes, yes, I saw it from downstairs.

15 Q. And do you remember when in relation to that  
16 carrier's arrival the checks came in for the  
17 bikes?

18 A. No. But the bikes wouldn't have been  
19 released unless and I hope everybody  
20 followed my instructions, unless they  
21 received checks from individual people  
22 that were buying those bikes, and that the  
23 titles were signed by those individual  
24 people.

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

	X	
CYCLE-CRAFT CO., INC.,	X	
d/b/a BOSTON	X	
HARLEY-DAVIDSON/BUELL,	X	
Plaintiff	X	
	X	CASE NO.
vs.	X	04 11402 NMG
	X	
HARLEY-DAVIDSON MOTOR	X	
COMPANY, INC., and BUELL	X	
DISTRIBUTION COMPANY, LLC,	X	
Defendants	X	

**CONTINUED DEPOSITION of RONALD S. BUCKBAUM**, taken pursuant to the applicable provisions of the Federal Rules of Civil Procedure, before Jill Kourafas, Certified Shorthand Reporter and Notary Public in and for the Commonwealth of Massachusetts held at the Law Offices of Bingham McCutchen, 150 Federal Street, Boston, Massachusetts, on Tuesday, June 21, 2005, commencing at 10:42 a.m.

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1 I don't want -- I'm not suggesting you're  
2 mischaracterizing, but it's not fair to the  
3 witness to try to summarize his testimony  
4 from a couple of weeks ago.

5 Q. Is that, in fact, what your testimony is,  
6 that you had an initial conversation with a  
7 gentleman from Florida and then turned the  
8 transaction or possible transaction over to  
9 Sean Walsh?

10 MR. REHNQUIST: Object to the form.

11 A. I don't know if I said that.

12 Q. I'm not asking if you said that, I'm asking  
13 you if that's accurate.

14 MR. REHNQUIST: Object to the form.

15 A. I think what I said was I remember talking to  
16 somebody in Florida, and then -- I don't  
17 remember, but I think I said I remember his  
18 name or nickname or something, and then I  
19 turned it over to Sean Walsh.

20 Q. All right. And did you leave it to Mr. Walsh  
21 to handle whatever negotiations needed to be  
22 handled with the gentleman from Florida?

23 MR. REHNQUIST: Object to the form.

24 A. As the person doing the deal, it would be his

1 responsibility.

2 Q. All right. And was that within his authority  
3 to do that without your being directly  
4 involved?

5 MR. REHNQUIST: Object to the form.

6 A. Yes. And keep me up to date on what's going  
7 on.

8 Q. In the summer of 2003, did you have meetings,  
9 whether regularly scheduled or not, of your  
10 direct reports at the dealership?

11 A. With what?

12 Q. With management of the dealership, managers  
13 meetings.

14 A. In '03?

15 Q. Yes.

16 A. I don't remember.

17 Q. How was Sean Walsh's performance as a  
18 salesman?

19 A. Satisfactory, to the best of my recollection.

20 Q. Do you recall ever having any problems with  
21 him?

22 A. I don't remember.

23 Q. Do you recall whether Sean Walsh ever  
24 did anything that you considered to be